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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) CR-09-0901 SBA
11)
Plaintiff,)
12)
vs.) **STIPULATION AND ORDER**
13) **CONTINUING HEARING AND**
DWEN EDWARD CURRY,) **EXCLUDING TIME**
14)
Defendant.)
15 _____)

16 Plaintiff, by and through its attorney of record, and defendant, by and through his
17 attorney of record, hereby stipulate and ask the Court to find as follows:

18 1. The parties request that the October 19, 2010 Plea and Sentencing hearing be
19 continued until 10:00 a.m. on November 16, 2010, for the reason that the probation officer has
20 identified numerous issues which require additional investigation and require the probation
21 officer to obtain additional documents. Accordingly, the probation officer requires additional
22 time necessary to complete a sentencing report. The parties have conferred and agree to a new
23 plea and sentencing date of November 16, 2010. Probation Officer, Connie Cook, has no
24 objection to this continuance and is in agreement with this request and new proposed date of
25 November 16, 2010.

26 2. The parties believe that failure to grant the above-requested continuance would

1 deny defendant continuity of counsel and deny defendant's counsel and defendant the
2 reasonable time necessary for effective preparation taking into account the exercise of due
3 diligence. Moreover, the ends of justice served by continuing the case as requested outweigh the
4 interest of the public and defendant in a trial within the date prescribed by the Speedy Trial Act.

5 3. Thus, the parties respectfully request that the Court find that the time period from
6 October 19, 2010, to November 16, 2010, is excludable pursuant to 18 U.S.C. §§ 3161(h)(7)(A),
7 (B)(iv) because it results from a continuance granted by the Court at the defendant's request and
8 on the basis of the Court's finding that the ends of justice served by taking such action outweigh
9 the best interest of the public and the defendant in a speedy trial and because failure to grant the
10 continuance would unreasonably deny defendant continuity of counsel and would unreasonably
11 deny defense counsel the time necessary for effective preparation for trial, taking into account
12 due diligence.

13 4. In addition, because the Court has taken the parties' proposed agreement under
14 submission, the parties agree that time should continue to be excluded in accordance with the
15 provisions of the Speedy Trial Act, 18 U.S.C. § 3161(h)(1)(G), based on the Court's
16 consideration of the proposed plea agreement to be entered into by the defendant and the
17 attorney for the Government.

18 SO STIPULATED.

19 Dated: August 9, 2010

_____/s/
JOSEPH P. RUSSONIELLO
United States Attorney

21 By: JOSHUA HILL
Assistant United States Attorney

23 Dated: August 9, 2010

_____/s/
GAIL SHIFMAN
Counsel for Defendant CURRY

ORDER

FOR GOOD CAUSE SHOWN, THE COURT ADOPTS THE FINDINGS OF FACT AND CONCLUSIONS OF LAW STIPULATED TO BY THE PARTIES. THEREFORE, IT IS SO FOUND AND ORDERED THAT:


1. The currently scheduled October 19, 2010, hearing is vacated. A hearing for plea and sentencing is now scheduled for 10:00 a.m. on November 16, 2010.

2. The time period from October 19, 2010 to November 16, 2010, is deemed excludable pursuant to 18 U.S.C. §§ 3161(h)(7)(A), (B)(iv) because it results from a continuance granted by the Court at the defendant's request and on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial and because failure to grant the continuance would unreasonably deny defense counsel the time necessary for effective preparation for trial, taking into account due diligence.

3. The time period from October 19, 2010 to November 16, 2010 is excluded under the Speedy Trial Act, specifically pursuant to 18 U.S.C. § 3161(h)(1)(G), for consideration by the Court of a proposed plea agreement to be entered into by the defendant and the attorney for the government.

4. The Court finds that nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which trial must commence.

Dated: August 20, 2010


HONORABLE SAUNDRA B. ARMSTRONG
United States District Judge